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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated
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Attachments	Motion for Resumption of Proceedings and Reconsideration of the Board's Order Dated October 2, 2007.pdf ( 6 pages )(173143 bytes ) Memorandum in Support of Motion.pdf ( 8 pages )(276582 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED	)	
	)	
Opposer	)	
v.	)	
THE BRINKMANN CORPORATION	)	Opposition No. 91164764
	)	
Applicant	)	
	)	
	)	

MOTION FOR RESUMPTION OF THE PROCEEDINGS  
AND RECONSIDERATION OF THE BOARD ORDER  
DATED APRIL 2, 2007 TO THE EXTENT IT PRECLUDES  
OPPOSER FROM OBJECTING TO APPLICANT'S AMENDED  
FIRST SET OF INTERROGATORIES

Opposer Brink's Network, Incorporated, in accordance with § 510.03(b) of the *Trademark Trial and Appeal Board Manual of Procedure* ("TBMP") and Rule 2.127(b) of the Trademark Rules of Practice, 37 C.F.R. § 2.127(b), respectfully requests the Board to resume proceedings in the above-captioned opposition and reconsider its Order of April 2, 2007, to the extent it precludes Opposer from objecting to any of Applicant's Amended First Set of Interrogatories. Opposer submits that the sanction of foregoing all objections imposed by the Board is unwarranted because Opposer had reasonable grounds for refusing to respond to Applicant's Amended First Set of Interrogatories and, in doing so, followed proper procedures and did not fail to comply with a prior Board order.

As grounds for this motion, Opposer states as follows:

- (1) Applicant served its original First Set of Interrogatories on September 22, 2005. Opposer interposed a General Objection to Applicant's First

Set of Interrogatories, on October 24, 2005, on the ground that the total number of interrogatories, counting subparts, exceeded seventy-five (75), in violation of Rule 2.120(d)(1) of the Trademark Rules of Practice. The discovery period closed on December 21, 2005, without any action by Applicant to compel Opposer to answer the interrogatories or seek Opposer's consent to serving a revised set of interrogatories.

- (2) Thereafter, Opposer filed a Motion to Compel, which was granted by the Board. As a result of granting Opposer's Motion to Compel, which required Applicant to produce certain documents and provide proposed dates for the deposition of Applicant's Rule 30(b)(6) witness, the Board reset the discovery period to close on February 15, 2007.
- (3) On December 13, 2006, Applicant served its Amended First Set of Interrogatories.
- (4) On January 11, 2007, Opposer served a General Objection to Applicant's Amended First Set of Interrogatories on the grounds that:  
(a) Applicant did not follow proper procedure prescribed in *TBMP* § 405.03(e) in serving the Amended First Set of Interrogatories following Opposer's objection to Applicant's First Set of Interrogatories; (b) the total number of interrogatories in Applicant's original First Set of Interrogatories and Applicant's Amended First Set of Interrogatories, counting subparts, exceeded seventy-five in violation of Rule 2.120(d)(1) of the Trademark Rules of Practice; and (c) Applicant's service of the Amended First Set of Interrogatories more than one year

after Opposer interposed its General Objection to the original First Set of Interrogatories constituted an abuse of the discovery process.

- (5) On February 2, 2007, Applicant filed a Motion to Compel Opposer to respond to Applicant's Amended First set of Interrogatories.
- (6) On February 16, 2007 Opposer filed a Memorandum in Response to Applicant's Motion to Compel Discovery. Opposer's Memorandum set forth the bases and support for its General Objection to Applicant's Amended First Set of Interrogatories.
- (7) While Applicant's Motion to Compel was under consideration by the Board, the parties filed a Joint Motion to Suspend Proceedings on March 15, 2007, to provide the parties with an opportunity to continue settlement discussions.
- (8) On April 2, 2007, the Board granted both Applicant's Motion to Compel and the Joint Motion to Suspend Proceedings.
- (9) The Order entered by the Board on April 2, 2007 suspended proceedings for six months and provided that proceedings would remain suspended until the Board entered an Order directing that proceedings are resumed.
- (10) In granting Applicant's Motion to Compel, the Board directed Opposer to answer Applicant's Amended First Set of Interrogatories without objection, in the event proceedings resumed upon expiration of the suspension period.
- (11) Sanctions of the type imposed by the Board in its April 2, 2007 Order are appropriate only where the Board has entered an order related to discovery and that order has been violated by the sanctioned party.


Opposer did not violate any Board Order. Indeed, Opposer followed proper procedure in interposing its General Objection to Applicant's original First Set of Interrogatories and Amended First Set of Interrogatories.

- (12) In its Memorandum in Response to Applicant's Motion to Compel Discovery, Opposer set forth solid, reasonable grounds for its objection to Applicant's Amended First Set of Interrogatories, based on Applicant's failure to follow the procedures set forth in *TBMP* § 405.03(e).
- (13) As Opposer's General Objection to Applicant's Amended First Set of Interrogatories was reasonable and supported by the procedural rules in an opposition proceeding, as fully explained in Opposer's Memorandum in Response to Applicant's Motion to Compel, and Opposer has not violated any prior Board Order, the requirement for Opposer to answer Applicant's Amended First Set of Interrogatories without objection is too severe a sanction. Opposer should be entitled to interpose objections to specific interrogatories included in Applicant's Amended First Set of Interrogatories as appropriate.
- (14) This motion is timely filed because of the Board's suspension of proceedings pending the parties' effort to reach a settlement. Opposer requests that this request for reconsideration be examined contemporaneous with the decision of the Board to resume proceedings.

A memorandum in support of this Motion is submitted concurrently herewith.

BRINK'S NETWORK, INCORPORATED

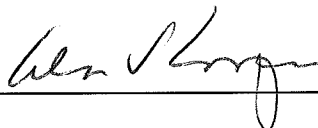
Date: October 23, 2007

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Resumption of the Proceedings and Reconsideration of the Board Order Dated April 2, 2007 to the Extent it Precludes Opposer from Objecting to Applicant's Amended First Set of Interrogatories was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 23rd day of October, 2007:

Gary Clark, Esq.  
Susan Hwang, Esq.  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED	)	
	)	
Opposer	)	
v.	)	
THE BRINKMANN CORPORATION	)	Opposition No. 91164764
	)	
Applicant	)	
	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION FOR RESUMPTION  
OF THE PROCEEDINGS AND RECONSIDERATION OF THE  
BOARD ORDER DATED APRIL 2, 2007 TO THE EXTENT IT  
PRECLUDES OPPOSER FROM OBJECTING TO APPLICANT'S  
AMENDED FIRST SET OF INTERROGATORIES

I. INTRODUCTION

This matter is before the Board on Opposer's motion pursuant to § 510.03(b) of the *Trademark Trial and Appeal Board Manual of Procedure* ("TBMP") and Rule 2.127(b) of the Trademark Rules of Practice, 37 C.F.R. § 2.127(b), respectfully requesting the Board to resume proceedings in the above-captioned opposition and to reconsider its Order of April 2, 2007, to the extent it precludes Opposer from objecting to any of Applicant's Amended First Set of Interrogatories.

II. FACTUAL BACKGROUND

On January 17, 2003, Applicant filed Application Serial No. 76/483,115, seeking to register the mark BRINKMANN for a variety of goods including home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets (the



“Opposed Application”). The Opposed Application was published for opposition on October 5, 2004. Opposer filed Requests for Extension of Time to Oppose, which were granted by the Board on November 2, 2004, November 9, 2004<sup>1</sup> and January 26, 2005, thus extending the statutory deadline for filing of a notice of opposition to April 3, 2005. Opposer filed a timely Notice of Opposition to the Opposed Application on April 1, 2005.

Applicant served its original First Set of Interrogatories on September 22, 2005. Opposer interposed a General Objection to Applicant’s First Set of Interrogatories on October 24, 2005, on the ground that the total number of interrogatories, counting subparts, exceeded seventy-five (75), in violation of Rule 2.120(d)(1) of the Trademark Rules of Practice. The discovery period closed on December 21, 2005, without any action by Applicant to compel Opposer to answer the interrogatories or seek Opposer’s consent to serving a revised set of interrogatories.

Thereafter, Opposer filed a Motion to Compel seeking to require Applicant to produce certain documents requested during discovery and to provide proposed dates for the deposition of Applicant’s Rule 30(b)(6) deposition witness. The Board granted that motion and reset the discovery period to close on February 15, 2007.

On December 13, 2006, Applicant served an Amended First Set of Interrogatories. On January 11, 2007, Opposer served a General Objection to Applicant’s Amended First Set of Interrogatories on the following grounds:

- (1) Applicant did not follow proper procedure prescribed  
in *TBMP* § 405.03(e) in serving the Amended First Set of

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<sup>1</sup> The Orders dated November 2 and November 9, 2004 respond to Opposer’s First Request for Extension of Time to Oppose for Good Cause. Both Orders extend the deadline to February 2, 2005.

Interrogatories following Opposer's objection to Applicant's First Set of Interrogatories;

- (2) The total number of interrogatories in Applicant's original First Set of Interrogatories and Applicant's Amended First Set of Interrogatories, counting subparts, exceeded seventy-five in violation of Rule 2.120(d)(1) of the Trademark Rules of Practice; and
- (3) Applicant's service of the Amended First Set of Interrogatories more than one year after Opposer interposed its General Objection to the original First Set of Interrogatories constituted an abuse of the discovery process.

On February 2, 2007, Applicant filed a Motion to Compel Opposer to respond to Applicant's Amended First set of Interrogatories. Opposer filed a Memorandum in Response to Applicant's Motion to Compel Discovery on February 16, 2007, which set forth the bases and support for its General Objection to Applicant's Amended First Set of Interrogatories.

While Applicant's Motion to Compel was under consideration by the Board, the parties filed a Joint Motion to Suspend Proceedings on March 15, 2007. The purpose of that Joint Motion was to provide the parties with an opportunity to continue settlement discussions.

On April 2, 2007, the Board granted both Applicant's Motion to Compel and the Joint Motion to Suspend Proceedings. The Order entered by the Board on April 2, 2007, suspended proceedings for six months and provided that proceedings would remain suspended until the Board entered an Order directing that proceedings are resumed. In granting Applicant's Motion to Compel, the Board directed Opposer

to answer Applicant's Amended First Set of Interrogatories without objection, in the event proceedings resumed upon expiration of the suspension period.

### III. ARGUMENT

As discussed more fully below, sanctions of the type imposed by the Board in its April 2, 2007 Order are appropriate only where the Board has entered an Order related to discovery and that Order has been violated by the sanctioned party. In this instance, Opposer did not violate any Board Order. Furthermore, Opposer's General Objection to Applicant's Amended First Set of Interrogatories was reasonable and supported by the procedural rules in an opposition proceeding, as fully explained in Opposer's Memorandum in Response to Applicant's Motion to Compel. Accordingly, Opposer should be entitled to interpose objections to specific interrogatories included in Applicant's Amended First Set of Interrogatories as appropriate.

Proceedings in an inter partes case may be suspended upon stipulation of the parties for good cause such as settlement discussions, subject to the right of either party to request resumption of the proceedings. See *TBMP* § 510.03(b). The Parties filed a Joint Motion to Suspend Proceedings on March 15, 2007, in order to continue settlement discussions. Accordingly, the Board suspended proceedings on April 2, 2007, for a period of six months.

Proceedings remain suspended until the Board issues an order that resumes proceedings and sets new response and/or trial dates. See *TBMP* § 510.03(b). The Order entered by the Board on April 2, 2007 suspended proceedings for six months and provided that proceedings would remain suspended until the Board entered an Order directing that proceedings are resumed. The parties engaged in

settlement negotiations but have been unable to resolve the issues in dispute between them. Accordingly, Opposer now requests resumption of the proceedings and submits that said request is warranted.

Contemporaneous with the resumption of the proceedings, Opposer expects the Board to reset the discovery deadline to allow Opposer to respond to Applicant's Amended First Set of Interrogatories. In anticipation of that Order and a new discovery deadline, Opposer respectfully submits that it should be entitled to object to specific interrogatories included in Applicant's Amended First Set of Interrogatories as appropriate. Accordingly, reconsideration of the Board Order of April 2, 2007 is warranted to the extent it precludes Opposer from objecting to any of Applicant's Amended First Set of Interrogatories.

As noted above, the April 2, 2007 Order grants Applicant's Motion to Compel and directs Opposer to answer Applicant's Amended First Set of Interrogatories without objection. Rule 2.120(g) of the Trademark Rules of Practice allows the Board to make any appropriate order, other than a contempt citation or an award of expenses, in circumstances where a party *fails to comply with an order of the Board*. 37 C.F.R. § 2.120(g) (Emphasis added). Sanctions of the type imposed by the Board in its April 2, 2007 Order certainly are appropriate where the Board has entered an order related to discovery and that order has been violated by the sanctioned party. See *Nobelle.com, LLC v. Qwest Communications Int'l, Inc.*, 66 U.S.P.Q.2d 1300 (TTAB Oct. 30, 2002) (finding discovery sanctions inappropriate where a Board order had not been issued or violated); see also *International Race of Champions, Inc. v. Horne et al*, 2001 WL 1402597 (TTAB Nov. 6, 2001) (noting that case law and Board practice show that a motion for sanctions is appropriate "only

when the Board has entered an order relating to discovery . . . and the order has assertedly been violated”).

However, in this instance, Opposer did not violate any Board Order. Indeed, Opposer followed proper procedure in interposing its General Objection to Applicant's original First Set of Interrogatories and Amended First Set of Interrogatories. See 37 C.F.R. § 2.120(d)(1); *TBMP* § 405.03(e). In its Memorandum in Response to Applicant's Motion to Compel Discovery, Opposer set forth solid, reasonable grounds for its objection to Applicant's Amended First Set of Interrogatories, based on Applicant's failure to follow the procedures set forth in *TBMP* § 405.03(e).

As Opposer's General Objection to Applicant's Amended First Set of Interrogatories was reasonable and supported by the procedural rules in an opposition proceeding and Opposer has not violated any prior Board Order, the requirement for Opposer to answer Applicant's Amended First Set of Interrogatories without objection is too severe a sanction. The fact that the Board did not agree with the grounds and legal reasons advanced by Opposer does not warrant the severe sanction imposed in this instance where there was a reasonable basis for Opposer's position. Accordingly, Opposer should be entitled to interpose objections to specific interrogatories included in Applicant's Amended First Set of Interrogatories as appropriate.

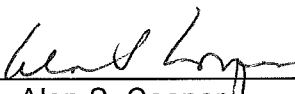
This motion is timely filed because of the Board's suspension of proceedings pending the parties' effort to reach a settlement. Opposer requests that this request for reconsideration be examined contemporaneous with the decision of the Board to resume proceedings.

#### IV. CONCLUSION

For all of the foregoing reasons, the subject proceedings should be resumed upon Opposer's request and, upon said resumption, Opposer should be entitled to interpose appropriate objections to specific interrogatories included in Applicant's Amended First Set of Interrogatories.

BRINK'S NETWORK, INCORPORATED

Dated: October 23, 2007

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of Opposer's Motion for Resumption of the Proceedings and Reconsideration of the Board Order Dated April 2, 2007 to the Extent it Precludes Opposer from Objecting to Applicant's Amended First Set of Interrogatories was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 23rd day of October, 2007:

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Susan Hwang, Esq.  
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A handwritten signature in cursive script, appearing to read "Susan Hwang", is written over a horizontal line.